PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 I Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUN 24 2008

FILE: [redacted] Office: Honolulu Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship in Behalf of an Adopted Child under Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires my be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on July 14, 1983, in the Philippines. On February 12, 1988, the applicant was adopted by [redacted] and [redacted] both United States citizens who have resided in the Commonwealth of the Northern Mariana Islands (CNMI) since November 1986, the date on which the domiciliaries of the CNMI became U.S. citizens. The adoptive parents married each other on June 1, 1969. Following the adoption, the applicant resided with the adoptive parents until June 1990. The applicant returned to the Philippines where she resided with her natural parents until August 1999 when she returned to the CNMI.

The application was filed on June 15, 2001, and the applicant turned 18 years old on July 14, 2001. The applicant satisfied the definition of adopted child under section 101(b)(1)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(E), having been adopted under the age of 16 years and having resided in the legal custody of the adopting parent for two years. The applicant seeks a certificate of citizenship under section 322 of the Act, 8 U.S.C. § 1433.

The district director reviewed section 322 of the Act regarding the acquisition of a certificate of citizenship for an adopted child who was born and residing outside of the United States. The district director concluded that the applicant had not satisfied the regulations relating to this section of the Act and denied the application accordingly.

On appeal, counsel states that the Bureau erred in ruling that the CNMI is not part of the United States. Counsel cites section 506 of the Covenant which established that the CNMI is deemed to be part of the United States for certain purposes. Counsel supports his assertions that the CNMI is part of the United States by "logical paraphrasing." He further asserts that the applicant meets the criteria under sections 322(a)(4) and (5) because her residence in the CNMI was outside the U.S. prior to her filing her N-634, but once that application was filed, she was considered temporarily residing in the United States.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 17 years and 7 months old on February 27, 2001. Therefore, the applicant is eligible for benefits under the CCA.

Section 322 of the Act in effect on February 27, 2001, provides that:

> (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired

citizenship automatically under section 320. The Attorney General shall issue such a certificate of citizenship to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

> (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
>
> (2) The United States citizen parent-
>
> > (A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
> >
> > (B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
>
> (3) The child is under the age of eighteen years.
>
> (4) The child is residing outside of the United States in the legal custody and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The district director reviewed the definitions of the terms "United States" and "outlying possessions of the United States" contained in sections 101(a)(38) and 101(a)(29) of the Act, 8 U.S.C. §§

1101(a)(38) and 1101(a)(29). The district director concluded that the covenant that established the CNMI deemed the CNMI to be part of the United States under the Act only for certain purposes and the CNMI is not part of the definition of the term "United States" nor "outlying possession of the United States." The district director determined that the applicant had failed to satisfy the statutory requirement of section 322(a)(4) of the Act, and both adoptive parents failed to satisfy the statutory requirement of section 322(a)(2) of the Act.

Pursuant to 8 C.F.R. § 322.2(a), to be eligible for a certificate of citizenship under section 322 of the Act, a child on whose behalf an application for certificate of citizenship has been filed by a U.S. citizen parent, must:

> (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship.

A Bureau memorandum dated February 26, 2001, regarding the CCA, states that section 322 still requires that the application be approved and the oath taken before the child reaches his or her 18th birthday.

At the present time, the applicant is over the age of 18 years and is ineligible for the benefit sought under section 322 of the Act.

The issue regarding the status of the CNMI in the geography of the United States has been thoroughly addressed by the district director and counsel. Counsel presents an argument that he claims supports a conclusion that the CNMI is considered a part of the United States for all purposes under the Act. However, that argument fails to overcome the statutory definitions of the terms "United States" and "outlying possession of the United States" as used in the Act. The statutory definitions of those terms in section 101 of the Act and their use in section 322 of the Act are clear and unambiguous. There is no provision for "logical paraphrasing." The Act makes specific reference to locations such as Guam, the Virgin Islands, American Samoa and Swains Island. If CNMI were to be included in the definitions other than in the very narrow provisions of section 506 of the covenant, it is logical to assume it would have been included somewhere in the Act.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to provide that evidence. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her residence.

ORDER: The appeal is dismissed.